

THE EFFECTIVE DATE OF THIS ORDINANCE IS August 18, 2004

ORDINANCE NO. 04-13-357

RE: AMENDING THE FREDERICK COUNTY CODE, SPECIFICALLY
SECTIONS 1-5-1, 1-5-22 AND 1-5-50 OF ARTICLE II: DOGS, CATS AND
OTHER ANIMALS

The Board of County Commissioners of Frederick County, Maryland desires to amend Sections 1-5-1, 1-5-22 and 1-5-50 of Article II: DOGS, CATS AND OTHER ANIMALS of the Frederick County, Maryland Code of Ordinances; specifically to add new definitions under Section 1-5-1; to delete the existing Section 1-5-22 and replace that with a section on dangerous and potentially dangerous dogs; and to raise the service fee in Section 1-5-50 from \$5.00 to \$10.00 per day.

The County Commissioners held a duly advertised public hearing concerning this proposed Ordinance on August 17, 2004. The public had an opportunity to comment on this ordinance at this public hearing.

NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that Sections 1-5-1, 1-5-22 and 1-5-50 be amended as follows:

§ 1-5-1. DEFINITIONS.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to therein by this section.

ANIMAL. Specifically includes, but is not limited to, domestic dogs, domestic cats, animals used for agricultural purposes and animals used for public exhibitions.

CAPITALS AND/OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

AT LARGE. An animal shall be deemed to be at large whenever it is not on the owner's property or under the immediate physical control of a responsible person capable of physically restraining the animal.

COMMERCIAL OPERATION. An establishment operating as a business within the county to include, but not be limited to, pet shops, boarding stables, boarding kennels and sales barns.

DANGEROUS DOG. ANY DOG THAT

(1) WITHOUT PROVOCATION CAUSES DEATH OR A SERIOUS INJURY TO A PERSON; OR

(2) AFTER HAVING BEEN DESIGNATED AS A POTENTIALLY DANGEROUS DOG BY THE DIRECTOR OF ANIMAL CONTROL, ENGAGES IN ANY BEHAVIOR WHICH RESULTS IN DEATH OR SERIOUS INJURY TO A PERSON OR DEATH OR SERIOUS INJURY TO AN ANIMAL.

IMPOUND. THE TAKING INTO PHYSICAL CUSTODY OF ANY ANIMAL BY THE DIVISION OF ANIMAL CONTROL.

KEEPING or HARBORING. The act or sufferance either of feeding or sheltering an animal on the premises of the occupant or owner thereof.

OWNER.

(1) Any person having a right of property in an animal or any person who keeps or harbors an animal or has it in his/her care or acts as custodian or permits it to remain on or about any premises occupied or controlled by him[.]; OR

(2) ANY PERSON, FIRM, CORPORATION, ORGANIZATION, OR DEPARTMENT POSSESSING, HARBORING, KEEPING, HAVING AN INTEREST IN, OR HAVING CONTROL OR CUSTODY OF A DOG.

CAPITALS AND/OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

POTENTIALLY DANGEROUS DOG. A DOG THAT POSES A THREAT TO PUBLIC SAFETY, DEMONSTRATED BY ANY OF THE FOLLOWING BEHAVIORS:

(1) CAUSES INJURY TO A PERSON WITHOUT PROVOCATION WHICH IS LESS SEVERE THAN A SERIOUS INJURY, OR CAUSES SEVERE INJURY TO OR KILLS A DOMESTIC ANIMAL; OR

(2) RUNNING AT LARGE, MEANING WHENEVER THE ANIMAL, THREE (3) OR MORE TIMES WITHIN ANY CONSECUTIVE (SIX) 6-MONTH PERIOD IS NOT ON THE OWNER'S REAL PROPERTY OR UNDER THE IMMEDIATE PHYSICAL CONTROL OF A RESPONSIBLE PERSON CAPABLE OF PHYSICALLY RESTRAINING THE DOG, OR IMPOUNDED BY THE DIVISION OF ANIMAL CONTROL THREE (3) OR MORE TIMES WITHIN ANY CONSECUTIVE (SIX) 6-MONTH PERIOD.

PROPER ENCLOSURE.

(1) SECURE CONFINEMENT INDOORS; OR

(2) SECURE CONFINEMENT OUTDOORS IN A LOCKED PEN OR STRUCTURE MEASURING AT LEAST FIVE (5) FEET IN WIDTH, TEN (10) FEET IN LENGTH, AND SIX (6) FEET IN HEIGHT, WITH SECURE SIDES, ROOF AND FLOOR, WHICH PROVIDES PROTECTION FROM THE ELEMENTS FOR THE DOG, IS SUITABLE TO PREVENT THE ENTRY OF YOUNG CHILDREN, AND IS DESIGNED TO PREVENT THE ANIMAL FROM ESCAPING.

PUBLIC NUISANCE. Any animal found repeatedly running at large, damaging property, molesting passersby, chasing vehicles or acting in any manner which is deemed to be doing damage to property or to the public health and well being, or shall have been determined by the animal control officer, the local health officer or any other authorized representative of the county to be a detriment to public health, welfare and safety shall be deemed to be a public nuisance.

SERIOUS INJURY. ANY PHYSICAL INJURY THAT RESULTS IN BROKEN BONES OR LACERATIONS THAT REQUIRE TWO (2) OR MORE SUTURES, OR COSMETIC SURGERY.

CAPITALS AND/OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

[VICIOUS DOG.

(1) Any individual dog that without provocation has killed or inflicted severe injury on a person; or

(2) Any individual dog that is determined by the appropriate county authority to be potentially dangerous and, subsequent to this determination and written notice to the owner of the determination and the reasons therefore, the dog engages in 1 or more of the following behaviors:

(a) The dog has inflicted a bite on a person either on public or private real property;

(b) The dog has killed or inflicted severe injury to a domestic animal when the dog is not on the owner's real property; or

(c) The dog attacked without provocation.

(3) This term shall not include a dog that attacks or bites or menaces a person or other animal under the following circumstances:

(a) The owner is being attacked by the person or other animal;

(b) The person or other animal is unlawfully trespassing on the property of the owner;

(c) The person or animal has tormented or abused the dog;

(d) The dog is defending its young or other animal; or

(e) The dog belongs to a government agency acting in the official performance of authorized duty.]

CAPITALS AND/OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

§ 1-5-22. [VICIOUS] DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

[Any vicious dog shall be confined on the premises of the owner or person in possession of the dog at all times in such a manner that it cannot reach persons who may have occasion to lawfully enter upon the premises at all reasonable times. The dog shall not be taken out of such confinement on the premises unless securely muzzled and under suitable control. Any owner who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined \$500.]

(A) DETERMINATION OF A POTENTIALLY DANGEROUS DOG.

(1) THE DIRECTOR IS AUTHORIZED TO MAKE A DETERMINATION WHETHER A DOG IS POTENTIALLY DANGEROUS AS DEFINED IN SECTION 1-5-1. AN INVESTIGATION MUST BE INITIATED WITHIN TEN (10) DAYS AFTER THE SITUATION BECOMES KNOWN TO THE DIVISION OF ANIMAL CONTROL. THE DIRECTOR SHALL NOTIFY THE OWNER OF THE DOG IN WRITING OF THAT STATUS WITHIN TEN (10) DAYS AFTER THE COMPLETION OF THE INVESTIGATION.

(2) FOLLOWING NOTICE TO THE OWNER, IF THE DIRECTOR HAS PROBABLE CAUSE TO BELIEVE THAT A DOG IS A POTENTIALLY DANGEROUS DOG AND POSES A THREAT TO PUBLIC SAFETY, MAY IMPOUND THE DOG PENDING DISPOSITION OF THE CASE. THE OWNER OF THE DOG SHALL REIMBURSE TO FREDERICK COUNTY FOR THE COSTS AND EXPENSES OF KEEPING THE DOG.

(3) AN OWNER MAY, WITHIN TEN (10) DAYS AFTER A DETERMINATION THAT A DOG IS A POTENTIALLY DANGEROUS, REQUEST A HEARING BEFORE THE DIRECTOR SEEKING REVIEW OF THE DETERMINATION.

(B) DETERMINATION OF A DANGEROUS DOG

(1) IF THE DIRECTOR HAS PROBABLE CAUSE TO BELIEVE THAT A DOG IS A DANGEROUS DOG, THE DIRECTOR MAY CONVENE A HEARING FOR THE PURPOSE OF DETERMINING WHETHER THE DOG IN QUESTION SHALL BE DECLARED A DANGEROUS DOG AND TO DETERMINE IF THE DOG WOULD POSE A THREAT TO PUBLIC SAFETY IF RETURNED TO ITS OWNER.

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[Brackets] indicate matter deleted from existing law.

(2) THE HEARING SHALL BE HELD NO LESS THAN TEN (10) DAYS AFTER SERVICE OF NOTICE UPON THE DOG'S OWNER. THE HEARING SHALL BE INFORMAL AND OPEN TO THE PUBLIC. THE OWNER SHALL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AS TO WHY THE DOG SHOULD NOT BE DECLARED A DANGEROUS DOG. THE DIRECTOR MAY PRESENT ALL ISSUES FOR OR AGAINST THE OWNER OF THE DOG REGARDLESS OF WHETHER THE OWNER APPEARS AT THE HEARING.

(3) WITHIN FIVE (5) DAYS AFTER THE HEARING, THE DIRECTOR SHALL NOTIFY THE OWNER IN WRITING OF THE DECISION.

(C) EXCEPTIONS

NO DOG SHALL BE DECLARED A DANGEROUS OR POTENTIALLY DANGEROUS DOG IF:

(1) THE DOG WAS USED BY A LAW ENFORCEMENT OFFICIAL FOR LEGITIMATE LAW ENFORCEMENT PURPOSES.

(2) THE INJURY OR DAMAGE WAS SUSTAINED BY A PERSON:

(a) WHO WAS COMMITTING, AT THE TIME, A WILLFUL TRESPASS OR OTHER TORT UPON THE PREMISES LAWFULLY OCCUPIED BY THE OWNER OF THE DOG; OR

(b) WHO WAS TORMENTING, ABUSING, OR ASSAULTING THE DOG; OR

(c) WHO WAS COMMITTING OR ATTEMPTING TO COMMIT A CRIME ON THE OWNERS PROPERTY; OR

(3) THE DOG WAS:

(a) RESPONDING TO PAIN OR INJURY, OR WAS PROTECTING ITSELF, OR ITS OFFSPRING; OR

(b) PROTECTING OR DEFENDING A HUMAN BEING WITHIN THE IMMEDIATE VICINITY OF THE DOG FROM A PHYSICAL ATTACK OR ASSAULT.

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[Brackets] indicate matter deleted from existing law.

(D) CONSEQUENCES OF A DANGEROUS OR POTENTIALLY DANGEROUS DOG DETERMINATION

(1) IF THE DIRECTOR DETERMINES THAT A DOG IS A POTENTIALLY DANGEROUS DOG UNDER THIS SECTION, THE OWNER SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION AND ANY OTHER SECURITY OR CARE REQUIREMENTS THE DIRECTOR MAY ESTABLISH.

(2) IF THE DIRECTOR DETERMINES THAT A DOG IS A DANGEROUS DOG UNDER THIS SECTION THE OWNER SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION AND ANY OTHER SECURITY OR CARE REQUIREMENTS THE DIRECTOR MAY ESTABLISH.

(3) THE DIRECTOR MAY HUMANELY DESTROY A DOG THAT HAS BEEN DETERMINED TO BE A DANGEROUS DOG AND POSES A THREAT TO PUBLIC SAFETY IF RETURNED TO ITS OWNER.

(4) THE DIRECTOR MAY IMPOUND THE DOG UNTIL THE OWNER OF THE DOG HAS SATISFIED ALL OF THE REQUIREMENTS OF WHICH DEEMED THE DOG DANGEROUS OR POTENTIALLY DANGEROUS. THE OWNER OF THE DOG SHALL BE LIABLE TO FREDERICK COUNTY FOR THE COSTS AND EXPENSES OF HOLDING THE DOG. THE REQUIREMENTS MUST BE MET WITHIN THIRTY (30) DAYS.

(E) DANGEROUS DOG AND POTENTIALLY DANGEROUS DOG REGISTRATION REQUIREMENTS

(1) THE DIRECTOR SHALL ISSUE A CERTIFICATE OF REGISTRATION TO THE OWNER OF A POTENTIALLY DANGEROUS DOG IF THE OWNER ESTABLISHES TO THE SATISFACTION OF THE DIRECTOR:

(a) THE OWNER OF THE POTENTIALLY DANGEROUS DOG IS TWENTY-ONE (21) YEARS OF AGE OR OLDER; AND

(b) THE OWNER HAS PAID AN ANNUAL FEE IN AN AMOUNT TO BE DETERMINED BY THE ANIMAL CONTROL DIRECTOR, IN ADDITION TO REGULAR DOG LICENSING FEES, TO REGISTER THE POTENTIALLY DANGEROUS DOG; AND

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(c) THE POTENTIALLY DANGEROUS DOG HAS CURRENT RABIES VACCINATIONS; AND

(d) THE OWNER HAS A PROPER ENCLOSURE TO PREVENT THE ENTRY OF ANY PERSON OR ANIMAL AND THE ESCAPE OF SAID POTENTIALLY DANGEROUS DOG; AND

(e) A VALID LICENSE HAS BEEN ISSUED FOR THE POTENTIALLY DANGEROUS DOG PURSUANT TO THIS JURISDICTION.

(2) THE DIRECTOR SHALL ISSUE A CERTIFICATE OF REGISTRATION TO THE OWNER OF A DANGEROUS DOG IF THE OWNER, IN ADDITION TO SATISFYING THE REQUIREMENTS FOR REGISTRATION OF A POTENTIALLY DANGEROUS DOG PURSUANT TO SUBPARAGRAPH (1) OF THIS SECTION, ESTABLISHES TO THE SATISFACTION OF THE DIRECTOR:

(a) THE OWNER OF THE DANGEROUS DOG HAS WRITTEN PERMISSION OF THE PROPERTY OWNER, LANDLORD OR PROPERTY MANAGER TO MAINTAIN THE ANIMAL ON THE PREMISES WHERE THE DANGEROUS DOG WILL BE KEPT; AND

(b) THE OWNER WILL MAINTAIN THE DANGEROUS DOG EXCLUSIVELY ON THE OWNER'S PROPERTY EXCEPT FOR EXAMINATION OR MEDICAL TREATMENT; AND

(c) THE OWNER OF THE DANGEROUS DOG HAS POSTED ON THE PREMISES A CLEARLY VISIBLE WRITTEN WARNING SIGN THAT THERE IS A DANGEROUS DOG ON THE PROPERTY WITH A CONSPICUOUS WARNING SYMBOL THAT INFORMS CHILDREN OF THE PRESENCE OF A DANGEROUS DOG. THE SIGN WILL BE VISIBLE FROM THE PUBLIC HIGHWAY OR 50 FEET WHICHEVER IS LESS; AND

(d) THE OWNER OF THE DOG WILL HAVE THE DOG SPAYED OR NEUTERED WITHIN THIRTY (30) DAYS OF BEING DEEMED DANGEROUS; AND

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[Brackets] indicate matter deleted from existing law.

(e) THE OWNER WILL HAVE THE DOG IMPLANTED WITH A MICROCHIP CONTAINING OWNER IDENTIFICATION INFORMATION. THE MICROCHIP INFORMATION MUST BE REGISTERED AND PROVIDED TO THE DIRECTOR WITHIN THREE (3) DAYS OF BEING DEEMED DANGEROUS.

(3) THE DIRECTOR MAY ORDER THE IMMEDIATE IMPOUNDMENT OR HUMANE DESTRUCTION OF A DANGEROUS DOG IF THE OWNER FAILS TO ABIDE BY THE CONDITIONS FOR REGISTRATION OF A DANGEROUS DOG.

(E) DANGEROUS OR POTENTIALLY DANGEROUS DOG OWNER RESPONSIBILITY

IT SHALL BE UNLAWFUL FOR THE OWNER OF A DANGEROUS OR POTENTIALLY DANGEROUS DOG TO:

(1) KEEP A DANGEROUS OR POTENTIALLY DANGEROUS DOG WITHOUT A VALID CERTIFICATE OF REGISTRATION ISSUED UNDER THIS SECTION;

(2) PERMIT A POTENTIALLY DANGEROUS DOG OFF THE OWNER'S REAL PROPERTY UNLESS THE POTENTIALLY DANGEROUS DOG IS UNDER THE IMMEDIATE PHYSICAL CONTROL OF A RESPONSIBLE ADULT AND RESTRAINED BY A CHAIN OR LEASH;

(3) FAIL TO KEEP A DANGEROUS DOG WITHIN THE OWNER'S PROPERTY EXCEPT FOR MEDICAL TREATMENT OR EXAMINATION. WHEN REMOVED FROM THE OWNER'S PROPERTY FOR MEDICAL TREATMENT OR EXAMINATION, THE DANGEROUS DOG SHALL BE CAGED OR UNDER THE CONTROL OF A RESPONSIBLE ADULT CAPABLE OF PHYSICALLY RESTRAINING THE ANIMAL, AND MUZZLED AND RESTRAINED WITH A CHAIN OR LEASH, NOT EXCEEDING FOUR (4) FEET IN LENGTH. THE MUZZLE SHALL BE APPROVED BY THE DIRECTOR.

(4) FAIL TO NOTIFY THE DIRECTOR WITHIN TWENTY-FOUR (24) HOURS IF A DANGEROUS OR POTENTIALLY DANGEROUS DOG IS ON THE LOOSE, IS UNCONFINED, HAS ATTACKED ANOTHER DOMESTIC ANIMAL, HAS ATTACKED

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A HUMAN BEING, HAS DIED, HAS BEEN SOLD, OR HAS BEEN GIVEN AWAY. IF THE DANGEROUS OR POTENTIALLY DANGEROUS DOG HAS BEEN SOLD OR GIVEN AWAY THE OWNER SHALL ALSO PROVIDE THE DIRECTOR WITH THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE NEW OWNER OF THE DANGEROUS OR POTENTIALLY DANGEROUS DOG.

(5) FAIL TO SURRENDER A DANGEROUS OR POTENTIALLY DANGEROUS DOG TO THE DIRECTOR FOR SAFE CONFINEMENT PENDING A DISPOSITION OF THE CIRCUMSTANCES WHEN THERE IS REASON TO BELIEVE THAT THE DANGEROUS OR POTENTIALLY DANGEROUS DOG POSES A THREAT TO PUBLIC SAFETY AFTER AN INVESTIGATION IS CONDUCTED BY ANIMAL CONTROL.

(G) PENALTIES

ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF SHALL BE FINED NO MORE THAN ONE THOUSAND DOLLARS (\$1,000.00).

(H) ANNUAL DANGEROUS DOG LICENSING DRIVE; EDUCATIONAL PROGRAM

THE DIRECTOR SHALL ENCOURAGE THE OWNERS OF DANGEROUS DOGS TO PARTICIPATE IN PREVENTIVE, BEHAVIORAL AND/OR OBEDIENCE PROGRAMS.

§ 1-5-50. SERVICE FEE.

Whenever an animal is impounded pursuant to this chapter or any other provision of law, the owner thereof shall pay a service fee of [\$5] TEN DOLLARS (\$10.00) per day or part thereof and costs of any required veterinary services and furnish satisfactory evidence that the dog or cat is licensed and vaccinated for rabies before release.

CAPITALS AND/OR UNDERLINING INDICATE MATTER ADDED TO EXISTING LAW.

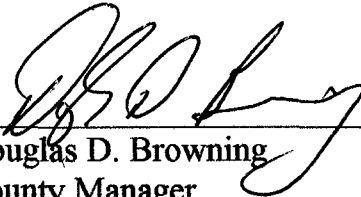
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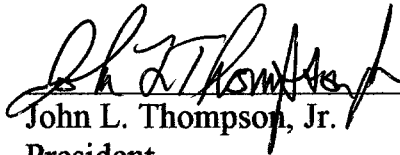
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall
take effect on August 18, 2004.

The undersigned hereby certifies that this Ordinance was approved and adopted on
the 17th day of August, 2004.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND


Douglas D. Browning
County Manager


John L. Thompson, Jr.
President

msc 8/18/04